

AMENDED IN ASSEMBLY MARCH 28, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1490

Introduced by Assembly Member Mendoza

February 23, 2007

An act to amend Sections 56058 and 56366.1 of, and to add Section 56058.5 to, the Education Code, relating to special education. An act to amend Section 17071.75 of the Education Code, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1490, as amended, Mendoza. ~~Special education: nonpublic, nonsectarian schools: teacher credentialing.~~ *School facilities: new construction: ongoing eligibility: portable classrooms.*

The Leroy F. Greene School Facilities Act of 1998 requires the State Allocation Board to allocate to applicant school districts, prescribed per-unhoused-pupil state funding for construction and modernization of school facilities, including hardship funding, and supplemental funding for site development and acquisition.

The act requires an applicant school district for new construction to submit to the board a one-time report of existing school building capacity that is to be calculated pursuant to a specified formula and requires ongoing eligibility for new construction funding to be determined by completing a series of calculations based on projected enrollment compared to existing school building capacity.

This bill would require the existing school building capacity calculation used to determine new construction eligibility to be reduced by the number of pupils that were adequately housed in a district-owned portable classroom that is at least 30 years old.

~~The federal No Child Left Behind Act of 2001 and the Individuals with Disabilities Education Improvement Act of 2004, together with the regulations implementing those acts, require public school teachers providing special education to meet the specified definitions of highly qualified. State law requires special education teachers to meet the federal highly qualified requirements. Nonpublic, nonsectarian schools are required to employ staff with credentials equivalent to those held by staff in public schools in order for the nonpublic, nonsectarian schools to be certified to provide special education and related services pursuant to individualized education programs.~~

~~This bill would specify that the federal highly qualified requirement and the federal special education personnel qualification requirement do not apply to special education teachers employed by a nonpublic, nonsectarian school. The Commission on Teacher Credentialing, in consultation with the State Department of Education, would be required to develop alternative credential requirements for special education teachers employed by nonpublic, nonsectarian schools. A special education teacher employed by a nonpublic, nonsectarian school that satisfies those alternative credential requirements for the courses taught by that teacher would have obtained a credential equivalent to that which a teacher in a public school is required to hold for purposes of the nonpublic, nonsectarian school certification requirements. The certification of a nonpublic, nonsectarian school would be prohibited from being denied or withdrawn based solely on any members of the staff of the school not meeting the definition of highly qualified or satisfying certain qualifications under specified provisions of federal law.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 17071.75 of the Education Code is~~
- 2 ~~amended to read:~~
- 3 ~~17071.75. After a one-time initial report of existing school~~
- 4 ~~building capacity has been completed, the ongoing eligibility of a~~
- 5 ~~school district for new construction funding shall be determined~~
- 6 ~~by making all of the following calculations:~~

1 (a) A school district that applies to receive funding for new
2 construction shall use the following methods to determine projected
3 enrollment:

4 (1) A school district that has two or more schoolsites each with
5 a pupil population density that is greater than 115 pupils per acre
6 in kindergarten and grades 1 to 6, inclusive, or a schoolsite pupil
7 population density that is greater than 90 pupils per acre in grades
8 7 to 12, inclusive, as determined by the Superintendent using
9 enrollment data from the California Basic Educational Data System
10 for the 2004–05 school year, may submit an application for funding
11 for projects that will relieve overcrowded conditions. That school
12 district *also* may ~~also~~ submit an alternative enrollment projection
13 for the fifth year beyond the fiscal year in which the application
14 is made using a methodology other than the cohort survival method
15 as defined by the board pursuant to paragraph (2), to be reviewed
16 by the Demographic Research Unit of the Department of Finance,
17 in consultation with the department and the Office of Public School
18 Construction. If the Office of Public School Construction and the
19 Demographic Research Unit of the Department of Finance jointly
20 determine that the alternative enrollment projection provides a
21 reasonable estimate of expected enrollment demand, a
22 recommendation shall be forwarded to the board to approve or
23 disapprove the application, in accordance with all of the following:

24 (A) Total funding for new construction projects using this
25 method shall be limited to five hundred million dollars
26 (\$500,000,000); from the Kindergarten-University Public Education
27 Facilities Bond Act of 2004.

28 (B) The eligibility amount for proposed projects that relieve
29 overcrowding is the difference between the alternative enrollment
30 projection method for the year the application is submitted and the
31 cohort survival method, as defined by paragraph (2), for the same
32 year, adjusted by the existing pupil capacity in excess of the
33 projected enrollment according to the cohort survival projection
34 method.

35 (C) The Office of Public School Construction shall determine
36 whether each proposed project will relieve overcrowding,
37 including, but not limited to, the elimination of the use of Concept
38 6 calendars, four track year-round calendars, or busing in excess
39 of 40 minutes, and recommend approval to the board. The number
40 of unhoused pupil grants requested in the application for funding

1 from the eligibility determined pursuant to this paragraph shall be
2 limited to the number of seats necessary to relieve overcrowding,
3 including, but not limited to, the elimination of the use of Concept
4 6 calendars, four track year-round calendars, or busing in excess
5 of 40 minutes, less the number of unhoused pupil grants attributed
6 to that school as a source school in an approved application
7 pursuant to Section 17078.24.

8 (D) A school district shall use the same alternative enrollment
9 projection methodology for all applications submitted pursuant to
10 this paragraph and shall calculate those projections in accordance
11 with the same districtwide or high school attendance area used for
12 the enrollment projection made pursuant to paragraph (2).

13 (2) A school district shall calculate enrollment projections for
14 the fifth year beyond the fiscal year in which the application is
15 made. Projected enrollment shall be determined by utilizing the
16 cohort survival enrollment projection system, as defined and
17 approved by the board. The board may supplement the cohort
18 survival enrollment projection by the number of unhoused pupils
19 that are anticipated as a result of dwelling units proposed pursuant
20 to approved and valid tentative subdivision maps.

21 (b) (1) Add the number of pupils that may be adequately housed
22 in the existing school building capacity of the applicant school
23 district as determined pursuant to Article 2 (commencing with
24 Section 17071.10) to the number of pupils for whom facilities were
25 provided from ~~any~~ a state or local funding source after the existing
26 school building capacity was determined pursuant to Article 2
27 (commencing with Section 17071.10). For this purpose, the total
28 number of pupils for whom facilities were provided shall be
29 determined using the pupil loading formula set forth in Section
30 17071.25.

31 (2) Subtract from the number of pupils calculated in paragraph
32 (1) the number of pupils that were housed in facilities to which
33 the school district or county office of education relinquished title
34 as the result of a transfer of a special education program between
35 a school district and a county office of education or special
36 education local plan area, if applicable. For this purpose, the total
37 number of pupils that were housed in the facilities to which title
38 was relinquished shall be determined using the pupil loading
39 formula adopted by the board pursuant to subparagraph (B) of
40 paragraph (2) of subdivision (a) of Section 17071.25. For purposes

1 of this paragraph, title also includes ~~any~~ a lease interest with a
2 duration of greater than five years.

3 (3) *Subtract from the number of pupils calculated in paragraph*
4 *(1) the number of pupils that were adequately housed in a portable*
5 *classroom owned by the school district that is at least 30 years*
6 *old.*

7 (c) Subtract the number of pupils pursuant to subdivision (b)
8 from the number of pupils determined pursuant to paragraph (2)
9 of subdivision (a).

10 (d) The calculations required to establish eligibility under this
11 article shall result in a distinction between the number of existing
12 unhoused pupils and the number of projected unhoused pupils.

13 (e) Apply the increase or decrease resulting from the difference
14 between the most recent report made pursuant to Section 42268,
15 and the report used in determining the baseline capacity of the
16 school district pursuant to subdivision (a) of Section 17071.25.

17 (f) For purposes of calculating projected enrollment pursuant
18 to subdivision (a), the board may adopt regulations to ensure that
19 the enrollment calculation of individuals with exceptional needs
20 receiving special education services is adjusted in the enrollment
21 reporting period in which the transfer occurs and three previous
22 school years as a result of ~~any~~ a transfer of a special education
23 program between a school district and a county office of education
24 or a special education local plan area. However, the projected
25 enrollment calculation of a county office of education *only* shall
26 ~~only~~ be adjusted if a transfer of title for the special education
27 program facilities has occurred. The regulations, if adopted, shall
28 ensure that if a transfer of title to special education program
29 facilities constructed with state funds occurs within 10 years after
30 initial occupancy of the facility, the receiving school district or
31 school districts shall remit to the state a proportionate share of any
32 financial hardship assistance provided for the project pursuant to
33 Section 17075.10, if applicable.

34 (g) For a school district with an enrollment of 2,500, or less, an
35 adjustment in enrollment projections shall not result in a loss of
36 ongoing eligibility to that school district for a period of three years
37 from the date of the approval of eligibility by the board.

38 ~~SECTION 1.—Section 56058 of the Education Code is amended~~
39 ~~to read:~~

1 ~~56058. Except where a special education teacher is employed~~
2 ~~by a nonpublic, nonsectarian school, special education teachers~~
3 ~~providing instruction and educational services under this part shall~~
4 ~~meet the same “highly qualified” requirements, as defined in~~
5 ~~paragraph (10) of Section 1401 of Title 20 of the United States~~
6 ~~Code, and qualifications described in paragraph (14) of subsection~~
7 ~~(a) of Section 1412 of Title 20 of the United States Code.~~

8 ~~SEC. 2. Section 56058.5 is added to the Education Code, to~~
9 ~~read:~~

10 ~~56058.5. (a) The Commission on Teacher Credentialing, in~~
11 ~~consultation with the department, shall develop alternative~~
12 ~~credential requirements for special education teachers employed~~
13 ~~by nonpublic, nonsectarian schools. These requirements shall be~~
14 ~~similar to the credential requirements for special education teachers~~
15 ~~employed by public schools, but shall not require the employee of~~
16 ~~the nonpublic, nonsectarian school to meet the highly qualified~~
17 ~~requirements specified in paragraph (10) of Section 1401 of Title~~
18 ~~20 of the United States Code, nor satisfy the qualifications~~
19 ~~described in paragraph (14) of subsection (a) of Section 1412 of~~
20 ~~Title 20 of the United States Code.~~

21 ~~(b) A special education teacher employed by a nonpublic,~~
22 ~~nonsectarian school that satisfies the applicable requirements~~
23 ~~developed pursuant to subdivision (a) for the courses taught by~~
24 ~~that teacher shall have obtained a credential equivalent to that~~
25 ~~which a teacher in a public school is required to hold for purposes~~
26 ~~of subdivision (n) of Section 56366.1 and shall not be required to~~
27 ~~obtain additional credentials in order to provide special education~~
28 ~~instruction in a nonpublic, nonsectarian school.~~

29 ~~SEC. 3. Section 56366.1 of the Education Code is amended to~~
30 ~~read:~~

31 ~~56366.1. (a) A nonpublic, nonsectarian school or agency that~~
32 ~~seeks certification shall file an application with the Superintendent~~
33 ~~on forms provided by the department and include the following~~
34 ~~information on the application:~~

35 ~~(1) A description of the special education and designated~~
36 ~~instruction and services provided to individuals with exceptional~~
37 ~~needs if the application is for nonpublic, nonsectarian school~~
38 ~~certification.~~

1 ~~(2) A description of the designated instruction and services~~
2 ~~provided to individuals with exceptional needs if the application~~
3 ~~is for nonpublic, nonsectarian agency certification.~~

4 ~~(3) A list of appropriately qualified staff, a description of the~~
5 ~~credential, license, or registration that qualifies each staff member~~
6 ~~rendering special education or designated instruction and services~~
7 ~~to do so, and copies of their credentials, licenses, or certificates of~~
8 ~~registration with the appropriate state or national organization that~~
9 ~~has established standards for the service rendered.~~

10 ~~(4) An annual operating budget.~~

11 ~~(5) Affidavits and assurances necessary to comply with all~~
12 ~~applicable federal, state, and local laws and regulations which~~
13 ~~include criminal record summaries required of all nonpublic school~~
14 ~~or agency personnel having contact with minor children under~~
15 ~~Section 44237.~~

16 ~~(b) (1) The applicant shall provide the special education local~~
17 ~~plan area in which the applicant is located with the written~~
18 ~~notification of its intent to seek certification or renewal of its~~
19 ~~certification. The applicant shall submit on a form, developed by~~
20 ~~the department, a signed verification by local educational agency~~
21 ~~representatives that they have been notified of the intent to certify~~
22 ~~or renew certification. The verification shall include a statement~~
23 ~~that representatives of the local educational agency for the area in~~
24 ~~which the applicant is located have had the opportunity to review~~
25 ~~the application at least 60 calendar days prior to submission of an~~
26 ~~initial application to the Superintendent, or at least 30 calendar~~
27 ~~days prior to submission of a renewal application to the~~
28 ~~Superintendent. The signed verification shall provide assurances~~
29 ~~that local educational agency representatives have had the~~
30 ~~opportunity to provide input on all required components of the~~
31 ~~application.~~

32 ~~(2) If the applicant has not received a response from the local~~
33 ~~educational agency 60 calendar days from the date of the return~~
34 ~~receipt for initial applications or 30 calendar days from the date~~
35 ~~of the return receipt for renewal applications, the applicant may~~
36 ~~file the application with the Superintendent. A copy of the return~~
37 ~~receipt shall be included with the application as verification of~~
38 ~~notification efforts to the local educational agency.~~

~~(3) The department shall mail renewal application materials to certified nonpublic, nonsectarian schools and agencies at least 120 days prior to the date their current certification expires.~~

~~(e) If the applicant operates a facility or program on more than one site, each site shall be certified.~~

~~(d) If the applicant is part of a larger program or facility on the same site, the Superintendent shall consider the effect of the total program on the applicant. A copy of the policies and standards for the nonpublic, nonsectarian school or agency and the larger program shall be available to the Superintendent.~~

~~(e) Prior to certification, the Superintendent shall conduct an onsite review of the facility and program for which the applicant seeks certification. The Superintendent may be assisted by representatives of the special education local plan area in which the applicant is located and a nonpublic, nonsectarian school or agency representative who does not have a conflict of interest with the applicant. The Superintendent shall conduct an additional onsite review of the facility and program within three years of the effective date of the certification, unless the Superintendent conditionally certifies the school or agency or unless the Superintendent receives a formal complaint against the school or agency. In the latter two cases, the Superintendent shall conduct an onsite review at least annually.~~

~~(f) The Superintendent shall make a determination on an application within 120 days of receipt of the application and shall certify, conditionally certify, or deny certification to the applicant. If the Superintendent fails to take one of these actions within 120 days, the applicant is automatically granted conditional certification for a period terminating on August 31, of the current school year. If certification is denied, the Superintendent shall provide reasons for the denial. The Superintendent may certify the school or agency for a period of not longer than one year.~~

~~(g) Certification becomes effective on the date the nonpublic, nonsectarian school or agency meets all the application requirements and is approved by the Superintendent. Certification may be retroactive if the school or agency met all the requirements of this section on the date the retroactive certification is effective. Certification expires on December 31 of the terminating year.~~

~~(h) The Superintendent shall annually review the certification of each nonpublic, nonsectarian school and agency. For this~~

1 ~~purpose, a certified school or agency shall annually update its~~
2 ~~application between August 1 and October 31, unless the board~~
3 ~~grants a waiver pursuant to Section 56101. The Superintendent~~
4 ~~may conduct an onsite review as part of the annual review.~~

5 ~~(i) (1) The Superintendent shall conduct an investigation of a~~
6 ~~nonpublic, nonsectarian school or agency onsite at any time without~~
7 ~~prior notice if there is substantial reason to believe that there is an~~
8 ~~immediate danger to the health, safety, or welfare of a child. The~~
9 ~~Superintendent shall document the concern and submit it to the~~
10 ~~nonpublic, nonsectarian school or agency at the time of the onsite~~
11 ~~investigation. The Superintendent shall require a written response~~
12 ~~to any noncompliance or deficiency found.~~

13 ~~(2) With respect to a nonpublic, nonsectarian school, the~~
14 ~~Superintendent shall conduct an investigation, which may include~~
15 ~~an unannounced onsite visit, if the Superintendent receives~~
16 ~~evidence of a significant deficiency in the quality of educational~~
17 ~~services provided, a violation of Section 56366.9, or~~
18 ~~noncompliance with the policies expressed by subdivision (b) of~~
19 ~~Section 1501 of the Health and Safety Code by the nonpublic,~~
20 ~~nonsectarian school. The Superintendent shall document the~~
21 ~~complaint and the results of the investigation and shall provide~~
22 ~~copies of the documentation to the complainant, the nonpublic,~~
23 ~~nonsectarian school, and the contracting local educational agency.~~

24 ~~(3) Violations or noncompliance documented pursuant to~~
25 ~~paragraph (1) or (2) shall be reflected in the status of the~~
26 ~~certification of the school, at the discretion of the Superintendent,~~
27 ~~pending an approved plan of correction by the nonpublic,~~
28 ~~nonsectarian school. The department shall retain for a period of~~
29 ~~10 years, all violations pertaining to certification of the nonpublic,~~
30 ~~nonsectarian school or agency.~~

31 ~~(j) The Superintendent shall monitor the facilities, the~~
32 ~~educational environment, and the quality of the educational~~
33 ~~program, including the teaching staff, the credentials authorizing~~
34 ~~service, the standards-based core curriculum being employed, and~~
35 ~~the standard focused instructional materials used, of an existing~~
36 ~~certified nonpublic, nonsectarian school or agency on a three-year~~
37 ~~cycle, as follows:~~

38 ~~(1) The nonpublic, nonsectarian school or agency shall complete~~
39 ~~a self-review in year one.~~

~~(2) The Superintendent shall conduct an onsite review of the nonpublic, nonsectarian school or agency in year two.~~

~~(3) The Superintendent shall conduct a followup visit to the nonpublic, nonsectarian school or agency in year three.~~

~~(k) (1) Notwithstanding any other provision of law, the Superintendent may not certify a nonpublic, nonsectarian school or agency that proposes to initiate or expand services to pupils currently educated in the immediate prior fiscal year in a juvenile court program, community school pursuant to Section 56150, or other nonspecial education program, including independent study or adult school, or both, unless the nonpublic, nonsectarian school or agency notifies the county superintendent of schools and the special education local plan area in which the proposed new or expanded nonpublic, nonsectarian school or agency is located of its intent to seek certification.~~

~~(2) The notification shall occur no later than the December 1 prior to the new fiscal year in which the proposed or expanding school or agency intends to initiate services. The notice shall include the following:~~

~~(A) The specific date upon which the proposed nonpublic, nonsectarian school or agency is to be established.~~

~~(B) The location of the proposed program or facility.~~

~~(C) The number of pupils proposed for services, the number of pupils currently served in the juvenile court, community school, or other nonspecial education program, the current school services including special education and related services provided for these pupils, and the specific program of special education and related services to be provided under the proposed program.~~

~~(D) The reason for the proposed change in services.~~

~~(E) The number of staff that will provide special education and designated instruction and services and hold a current valid California credential or license in the service rendered or certificate of registration to provide occupational therapy.~~

~~(3) In addition to the requirements in subdivisions (a) to (f), inclusive, the Superintendent shall require and consider the following in determining whether to certify a nonpublic, nonsectarian school or agency as described in this subdivision:~~

~~(A) A complete statement of the information required as part of the notice under paragraph (1).~~

~~(B) Documentation of the steps taken in preparation for the conversion to a nonpublic, nonsectarian school or agency, including information related to changes in the population to be served and the services to be provided pursuant to each pupil's individualized education program.~~

~~(4) Notwithstanding any other provision of law, the certification becomes effective no earlier than July 1 if the school or agency provided the notification required pursuant to paragraph (1).~~

~~(l) (1) Notwithstanding any other provision of law, the Superintendent may not certify or renew the certification of a nonpublic, nonsectarian school or agency, unless all of the following conditions are met:~~

~~(A) The entity operating the nonpublic, nonsectarian school or agency maintains separate financial records for each entity that it operates, with each nonpublic, nonsectarian school or agency identified separately from any licensed children's institution that it operates.~~

~~(B) The entity submits an annual budget that identifies the projected costs and revenues for each entity and demonstrates that the rates to be charged are reasonable to support the operation of the entity.~~

~~(C) The entity submits an entity-wide annual audit that identifies its costs and revenues, by entity, in accordance with generally accepted accounting and auditing principles. The audit shall clearly document the amount of moneys received and expended on the education program provided by the nonpublic, nonsectarian school.~~

~~(D) The relationship between various entities operated by the same entity are documented, defining the responsibilities of the entities. The documentation shall clearly identify the services to be provided as part of each program, for example, the residential or medical program, the mental health program, or the educational program. The entity shall not seek funding from a public agency for a service, either separately or as part of a package of services, if the service is funded by another public agency, either separately or as part of a package of services.~~

~~(2) For purposes of this section, the term "licensed children's institution" has the same meaning as it is defined by Section 56155.5.~~

~~(m) The school or agency shall be charged a reasonable fee for certification. The Superintendent may adjust the fee annually~~

commensurate with the statewide average percentage inflation adjustment computed for revenue limits of unified school districts with greater than 1,500 units of average daily attendance if the percentage increase is reflected in the district revenue limit for inflation purposes. For purposes of this section, the base fee shall be the following:

(1) 1-5 pupils.....	\$—300
(2) 6-10 pupils.....	500
(3) 11-24 pupils.....	—1,000
(4) 25-75 pupils.....	—1,500
(5) 76 pupils and over.....	—2,000

The school or agency shall pay this fee when it applies for certification and when it updates its application for annual review by the Superintendent. The Superintendent shall use these fees to conduct onsite reviews, which may include field experts. No fee shall be refunded if the application is withdrawn or is denied by the Superintendent.

(n) (1) Notwithstanding any other provision of law, only those nonpublic, nonsectarian schools and agencies that provide special education and designated instruction and services utilizing staff who hold a certificate, permit, or other document equivalent to that which staff in a public school are required to hold in the service rendered are eligible to receive certification. Only those nonpublic, nonsectarian schools or agencies located outside California that employ staff who hold a current valid credential or license to render special education and related services as required by that state shall be eligible to be certified. However, the certification of a nonpublic, nonsectarian school shall not be denied or otherwise withdrawn based solely on the fact that one or more members of the staff of the school do not meet the definition of highly qualified under paragraph (10) of Section 1401 of Title 20 of the United States Code or satisfy the qualifications described in paragraph (14) of subsection (a) of Section 1412 of Title 20 of the United States Code.

(2) The board shall develop regulations to implement this subdivision.

(e) In addition to meeting the standards adopted by the board, a nonpublic, nonsectarian school or agency shall provide written

- 1 ~~assurances that it meets all applicable standards relating to fire,~~
- 2 ~~health, sanitation, and building safety.~~

O